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No. 83-257

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**In the Supreme Court of the United States**

OCTOBER TERM, 1983

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CITY COUNCIL OF AUGUSTA, GEORGIA, PETITIONER

v.

JIMMY ALLEN ALEWINE, ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE ELEVENTH CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES**

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REX E. LEE  
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## MEMORANDUM FOR THE UNITED STATES

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Petitioner seeks review of the judgment of the court of appeals holding that the overtime pay provisions of the Fair Labor Standards Act of 1938, 29 U.S.C. (& Supp. V) 201 *et seq.*, may constitutionally be applied in favor of the employees of a publicly owned transit system. As petitioner recognizes (Pet. i, 6, 11), the issue in this case is the same as that presented in *Donovan v. San Antonio Metropolitan Transit Authority*, appeal docketed, No. 82-1951 (filed June 1, 1983), and the companion case, *Garcia v. San Antonio Metropolitan Transit Authority*, appeal docketed, No. 82-1913 (filed May 26, 1983).<sup>1</sup> Petitioner has not identified any aspect of this case that would make plenary consid-

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<sup>1</sup>This case was decided by the court of appeals together with *Joiner v. City of Macon*, which presents the same issue, in an opinion reported at 699 F.2d 1060. Certiorari has also been sought in *City of Macon v. Joiner*, No. 82-1974 (filed June 3, 1983).

eration together with the *San Antonio* case necessary or advantageous. Accordingly, given the purely legal dimensions of the common question presented, this case should be held and disposed of as appropriate in light of the final disposition of the pending appeals in the *San Antonio* case.<sup>2</sup>

It is therefore respectfully submitted that the petition for a writ of certiorari should be held for appropriate disposition in light of *Donovan v. San Antonio Metropolitan Transit Authority*, No. 82-1951, and *Garcia v. San Antonio Metropolitan Transit Authority*, No. 82-1913.

REX E. LEE  
*Solicitor General*

SEPTEMBER 1983

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<sup>2</sup>We have suggested the same disposition in *City of Macon v. Joiner*, No. 82-1974. See note 1, *supra*.

